IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 11217 of 2004

Between:

Sri Ramdev Kirtan Sangam Mandir Trust, through its Managing Trustee Sri Prem Biyani, S/o Sri Mohanlal Biyani, aged 43 years, Occ: Business, R/o H.No.5-3-320/1 Mohan Nagar Colony, Hyderabad.

..... PETITIONER

AND

1. The Commissioner, Endowment Department, Tilak Road, Hyderabad ., AP.

2. The Deputy Commissioner (G) Endowment Department , Tilak Road, Hyderabad , AP.

3. The Assistant Commissioner of Endowment (Ranga Reddy District) having its office at Barakatpura, Hyderabad

4. A.Sattaji, In charge Inspector, Endowment Dept., Hyderabad (West), Tilak Road, Hyderabad., AP.

5. Prem Kumar Mittal, s/o Late Sri Nagarmal Agarwal, aged about 52 yrs, Occu: Business, R/o 3-5-45, Ramkote, Hyderabad.

6. Laxmijath Nahata, s/o Late Sri Dharmchandaji Nahata, aged about 53 yrs, Occu:Business, R/o No.70, Suryanagar Colony, Karkhana Road, Secunderabad.

7. Ramesh Solanki, s/o Late Sri Jawaharlalji Solanki, aged about 41 yrs, Occu: Business, R/o 19-3-992/93, Shamsheergunj, Hyderabad.

(RRs 5 to 7 impleaded as per Court order dated 06-08-2004 in WPMP No.15860 of

2004.)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to exercise its extraordinary jurisdiction under Article 226 of the Constitution to pass appropriate Writ or Writs more in the nature of Writ of Mandamus or like any other Writ, Petition, declaring the order in Proceedings Rc.No.C/326/04 dt.18/06/2004 passed by the 3rd respondent as illegal, arbitrary contrary to the principles of natural justice effecting the Fundamental Rights under Article 25 of the Constitution of India and contrary to Section 29 of the Act 30 of 1987 and suspend the order dt. 18/06/2004 and be pleased to pass consequential directions, directing the 4th respondent not to interfere in management and functioning of the Writ petition in any manner and grant such relief or other relief.

Counsel for the Petitioner :MR.BANKATLAL MANDHANI

Counsel for the Respondents 1 to 4: GP FOR ENDOWMENTS

Counsel for the Respondents 5 to 7: MR.PRATAP NARAYAN SANGHI

The Court made the following:

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O R D E R:

Heard both sides.

At their request, the main writ petition itself is taken up for disposal. The petitioner herein, which is Trust, filed this writ petition, *inter alia,* challenging the proceedings Rc.No.C/326/04, dated 18-06-2004, passed by third respondent viz., Assistant Commissioner of Endowments, Ranga Reddy District, wherein
fourth respondent, Inspector of Endowments Department, was appointed and was directed to take charge as in-charge Executive Officer of the petitioner-Trust.

The learned counsel appearing for the petitioner emphatically contends that having regard to the powers conferred under various provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'), there is no power vesting with the Assistant Commissioner of Endowments to appoint any person as Executive Officer or even to make such in-charge arrangements as sought to be done under the impugned orders. Therefore, it is contended that the entire proceedings are without jurisdiction. Apart from that, the impugned orders are not on the basis of principles of natural justice, nor the petitioner was given any opportunity before making such in-charge arrangement in regard to the administration of the petitioner-Trust.

The learned counsel appearing on behalf of the contesting respondents, Sri Pratap Narayan Sanghi, submitted that the power to

appoint such Executive Officer or in-charge is emerged from the provisions of Sections 6 (c), 8 and 15 (3) of the aforesaid Act. Therefore, the Assistant Commissioner is fully competent to pass such orders, more so, when the institution itself is declared under Section 6(c) of the Act. Further, the impugned orders show that it is only in pursuance of the delegated powers as provided under Section 8(5) of the Act, and, therefore, there is no illegality.

Having considered the submissions made by both the counsel and on perusal of the material on record, the only question that arises for consideration is as to whether in respect of any institutions, declared under Section 6 (c) of the above Act, whether the Assistant Commissioner of Endowments has got any powers to appoint an Executive Officer or make in charge as such.

The learned Government Pleader appearing on behalf of the respondents is also not able to satisfy in regard to the powers of the Assistant Commissioner from out of the provisions of the aforesaid Act. There is no dispute that the institution is declared under Section 6(c) of the Act. According to the learned Counsel appearing for the respondents, the power can be pressed from out of Section 8(5) and 15(3) of the Act and the Assistant Commissioner has got powers to make such arrangements or to appoint an Executive Officer. On a bare reading of Section 6 of the Act shows that it is only a procedure for preparation of list of institutions. Section 8(5) of the Act contemplates that the Commissioner may delegate to the Assistant Commissioner any of the powers conferred on or functions entrusted to the Commissioner by or under this Act except in regard to the provisions made thereupon. However, in this regard, the learned counsel appearing on behalf of the contesting respondents and Government Pleader is not able to show any notification delegating powers in favour of the Assistant Commissioner by the Commissioner. In the absence of the same, it cannot be said that by mere instructions the Assistant Commissioner can pass any orders, especially in the absence of proper proceedings, notification etc., from the Commissioner himself in regard to delegation of powers.

As regards Section 15(3), which is sought to be relied upon by the learned counsel for the respondents is concerned, it contemplates only appointment of board of trustees and does not take in any appointment. Therefore, the said provision is not applicable to the facts of the present case. Having regard to the nature of powers, as conferred under the provisions of the said Act, there is absolutely no power with the Assistant Commissioner to make any such appointment. The only power which can be pressed for appointment of Assistant Commissioner is only under Section 29 of the Act which contemplates the power for appointment of the Executive Officer. However, the said power is controlled by proper notifications and also the proceedings to be issued by the competent authority. The respondents, even under this provision, have not shown any notification in regard to delegation of power for appointment of Executive Officer. Therefore, it is to be held that the Assistant Commissioner has no power or jurisdiction to make any appointment of Executive Officer or to make any in-charge arrangement.

Accordingly, the writ petition is allowed. No costs.

06-08-2004

Lrkm.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Friday the 8th day of August, 2004.

Asst.Registrar.

To

1. The Commissioner, Endowments Department, Tilak Road, Hyderabad ., AP.
2. The Deputy Commissioner (G) Endowments Department , Tilak Road, Hyderabad , AP.
3. The Assistant Commissioner of Endowments (Ranga Reddy District) having its

office at Barakatpura, Hyderabad

4. A.Sattaji, In charge Inspector, Endowments Department,

Hyderabad (West), Tilak Road, Hyderabad., AP.

5. Two CCs to the Government Pleader for Endowments, High Court

Bldgs, High Court of A.P., Hyderabad (O.U.T).

6. 2CD copies